Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

In the

Supreme Court of the United States

FRANK J. LAWRENCE, JR.,
Petitioner,

v.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Pursuant to W.D. Mich. LCivR 83.1(c)(i) and W.D. Mich. LCrR 57.1(c)(i), only a person who is "duly admitted to practice in a court of record of a state, and who is in active status and in good standing, may apply for admission to the bar of [the United States District Court for the Western District of Michigan] . . . ." The question presented is:

Did the Respondent unconstitutionally apply W.D. Mich. LCivR 83.1(c)(i) and W.D. Mich. LCrR 57.1(c)(i) to Petitioner's circumstances when it summarily denied his application for membership to the federal bar, citing Petitioner's failure to be a member "a court of record of a state," given that Petitioner's application alleged that he was denied admission to the State Bar of Michigan for unconstitutional reasons?[1]

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[1] For a history of litigation between Petitioner and the State Bar of Michigan, *see Lawrence v. Welch*, 531 F.3d 364 (6th Cir. 2008), *cert. den.* 130 S. Ct. 233 (2009).

PARTIES TO THE PROCEEDING

Petitioner

Petitioner is Frank J. Lawrence, Jr., an individual citizen of the United States, residing in Bloomfield Hills, Michigan.

Respondents

Respondent United States District Court for the Western District of Michigan is one of two federal district courts within in the State of Michigan that has the inherent authority to admit or deny an applicant's application for admission to practice law before that Court.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a Writ of Certiorari to review the Judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The Order of the United States Court of Appeals for the Sixth Circuit is unpublished and reproduced at Pet. App. 1a. The final Judgment of the United States District Court for the Western District of Michigan is unpublished and reproduced at Pet. App. 4a.

STATEMENT OF JURISDICTION

The Judgment of the Court of Appeals was issued on December 2, 2009. Pet. App. 1a. The jurisdiction of this Court is invoked under 28 USC §1254(1). On March 3, 2010, Justice Stevens extended the time for filing a petition for writ of certiorari to and including May 1, 2010. Pet. App. 6a.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the following Court Rules:

W.D. Mich. LCivR 83.1(c)(i) and W.D. Mich. LCrR 57.1(c)(i).

These Local Court Rules of the United States District Court of the Western District of Michigan provide that only a person who is "duly admitted to practice in a court of record of a state, and who is in active status and in good standing, may apply for admission to the bar . . . ."

STATEMENT OF THE CASE

After Petitioner was denied a law license by the State of Michigan for the speech-related activities stated in *Lawrence v. Welch*, 531 F.3d 364 (6th Cir. 2008), he applied for membership in the federal bar, arguing that the grounds used to deny him admission in the state system would not be disqualifying under federal standards.

Petitioner is not the first person to seek membership in a federal court without first being admitted to a state bar. *In re Pawlak*, 1995 U.S. Dist. LEXIS 18194 (E.D. Pa. Nov. 30, 1995). In the *Pawlak* case, Ms. Pawlak failed her state's bar examination and she then requested admission to the federal bar. The district court found her request to be inappropriate because it was unwilling to undertake an independent examination of Ms. Pawlak's legal skills, a task for which it lacked standards and procedures of its own (the federal courts rely upon the states' Bar Examinations). However, determining an applicant's character to practice law in a federal forum is different: the Chief Judge of the Western District of Michigan is provided the power to determine whether a person "is qualified to be entrusted with professional matters and to aid in the administration of justice as an attorney and officer of the Court". W.D. Mich. LCivR 83.1(c)(ii). Therefore, Petitioner argued that, unlike the *Pawlak* case, here the lower court possesses the ability to determine his character and fitness to practice law in a federal forum.

The United States District Court of the Western District of Michigan summarily denied Petitioner's application because he was not a member of any state's bar and W.D. Mich. LCivR 83.1(c)(i) and W.D. Mich. LCrR

57.1(c)(i) required state bar membership as a prerequisite to membership in the federal bar.

On appeal, the United States Court of Appeals for the Sixth Circuit affirmed. It held that the lower court did not abuse its discretion, given the plain language of the two relevant Local Rules. It further rejected Petitioner's as-applied argument, citing the Eleventh Circuit's unpublished decision in *In re Kandekore*,140 F. App'x 848, 849-50 (11th Cir. 2005).

REASONS FOR GRANTING THE WRIT

In *Sperry v. Florida ex rel. the Florida Bar*, 373 U.S. 379, 385 (1963), this Court held that when a state licensing law excludes a lawyer from practice that federal rules expressly allow, the two rules conflict, and the state law must give way. The Sixth Circuit has acknowledged that "Practice before federal courts is not governed by state court rules." *Rittenhouse v. Delta Home Improvement, Inc.* (*In re Desilets*), 291 F.3d 925, 928 (6th Cir. 2002), *citing In re Poole*, 222 F.3d 618, 622 (9th Cir. 2000).

Petitioner was rejected for membership in his home state on account of speech-related activities. *See Lawrence v. Welch*, 531 F.3d 364 (6th Cir. 2008). However, under federal standards, the grounds used to deny him admission by state officials could not be similarly used as a basis for rejection in the federal system. *See Konigsberg v. State Bar of California*, 353 U.S. 252, 268-269; 77 S. Ct. 722; 1 L. Ed. 2d 810 (1957); *Perry v. Sindermann*, 408 U.S. 593, 597; 33 L. Ed. 2d 570; 92 S. Ct. 2694 (1972).

This case presents a question of national significance. Specifically, Petitioner respectfully requests that this Court hold that lower federal courts may not summarily reject an applicant's request for admission to the federal bar on account of his lack of membership in a state bar, when the applicant alleges that he was denied admission by state officials for unconstitutional reasons.

The Court's review is warranted for these reasons.

I. W.D. Mich. LCivR 83.1(c)(i) and W.D. Mich. LCrR 57.1(c)(i) were unconstitutionally applied by the district court when it summarily denied Petitioner's application for membership to the federal bar, given that Petitioner alleged that he was denied admission to the State Bar of Michigan for reasons that violate federal law.

Petitioner's application for admission, taken as true at this stage of the litigation, argues that he has been excluded from state bar membership for reasons that would not be disqualifying for membership to the federal bar. Specifically, Petitioner argues that the lower court erred in summarily denying his application for lack of membership in a state court, when Petitioner alleged that he had been denied licensure in a state forum for reasons that violate federal law.

Although this precise issue has never been directly addressed by any known federal Court of Appeals or this Court, there is ample authority, in the context of disciplinary proceedings, that federal standards exclusively govern federal practice. This is because admission to practice law before a state's courts and admission to practice before the federal courts in that state are separate, independent privileges. *Rittenhouse, supra*, 291 F.3d at 928.

"The two judicial systems of courts, the state judicatures and the federal judiciary, have autonomous control over the conduct of their officers, among whom, in the present context, lawyers are included". *In re Poole, supra*, 222 F.3d at 620 *citing Theard v. United States*, 354 U.S. 278, 281 (1957). A United States District Court has the authority to deny an attorney's application for

admission to its bar when it is not satisfied that he possesses good private and professional character, even if the attorney is authorized to practice law in one or more state courts. *In re G.L.S.*, 745 F.2d 856, 859 (4th Cir. 1984) *citing* 28 USC § 1654, 28 USC 2071, and Fed. R. Civ. P. 83. *Also see, Grievance Comm. v. Gouiran (In re Gouiran)*, 58 F.3d 54 (2nd Cir. 1995) (explaining federal court's autonomous control over its membership and that loss of state bar membership standing alone does not set forth grounds for revocation of federal bar membership).[2]

Since it is proper for a federal court to inquire into the constitutionality of the procedures employed by a state in rendering a decision on an attorney's continued fitness to practice law, *see In re Ruffalo*, 390 U.S. 544, 550 (1968), it follows that it would be proper for the lower court here to do the same. To be clear, Petitioner is not seeking a declaration that his prior state bar applications were unconstitutionally denied. Rather, he seeks admission to the federal bar because the conduct for which he was disqualified in the state system is simply not grounds for denial in the federal system.

Michigan officials believe that a bar applicant's public criticism of state officials is grounds for character rejection. *See Lawrence v. Welch*, 531 F.3d 364 (6th Cir. 2008). However, under federal law, the standards are different. In *Konigsberg v. State Bar of California*, 353 U.S. 252, 268-269 (1957), a bar applicant wrote a series of

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[2] In *Selling v. Radford*, 243 U.S. 46, 49 (1917), this Court characterized the requirement of state bar membership of those admitted to the federal bar as "ephemeral." In *Gouiran, supra* at 57, the Second Circuit held that an attorney with no state bar membership at all (after losing it) can retain his federal bar membership.

editorials for a local newspaper where he "severely criticized ... this Court's decisions in Dennis and other cases." *Id.* at 268. In addressing the bar applicant's "severe" criticism of public officials, this Court stated that an applicant's challenge to, or disagreement with, governmental action is not a rational basis for character rejection:

> We do not believe that an inference of bad moral character can rationally be drawn from these editorials. Because of the very nature of our democracy such expressions of political views must be permitted. Citizens have a right under our constitutional system to criticize government officials and agencies. Courts are not, and should not be, immune to such criticism. Government censorship can no more be reconciled with our national constitutional standard of freedom of speech and press when done in the guise of determining "moral character," than if it should be attempted directly.

Konigsberg, 353 U.S. at 269.

A strict application of W.D. Mich. LCivR 83.1(c)(i) and W.D. Mich. LCrR 57.1(c)(i) to Petitioner's circumstances is intolerable because it "produce[s] a result which [the federal government] could not command directly":

> For at least a quarter-century, this Court has made clear that even though a person has no "right" to a valuable governmental benefit and even though the government may deny him the benefit for any number of reasons, there are some reasons upon which the

> government may not rely. It may not deny a benefit to a person on a basis that infringes his constitutionally protected interests -- especially, his interest in freedom of speech. For if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited. This would allow the government to "produce a result which [it] could not command directly." *Speiser v. Randall*, 357 U.S. 513, 526. Such interference with constitutional rights is impermissible.

Perry, supra, 408 U.S. at 597.

In other words, a district court "could not command directly" that Petitioner be denied admission to the bar on account of his public criticism of government officials. However, by relying upon a state decision that does violate federal law, the district court – by proxy – is producing the same result.

Finally, the Sixth Circuit's reliance upon the Eleventh Circuit's unpublished decision in *In re Kandekore*,140 F. App'x 848, 849-50 (11th Cir. 2005) is difficult to discern. In the matter *sub judice*, Petitioner claims that he was denied membership by state officials for reasons that would not be disqualifying under federal law. There was no such claim in *Kandekore*, and had Mr. Kandekore claimed that his disbarment proceedings in the state system lacked due process, the federal district court would have been required to evaluate that claim. *In re Ruffalo*, 390 U.S. at 551-552.

CONCLUSION

The Petition for a Writ of Certiorari should be granted. Although there is nothing wrong with generally relying upon a state's decision to initially admit or deny an applicant's application to the practice of law, there may be some situations where states deny admission for reasons that violate federal law. The matter *sub judice* involves one of those situations. Therefore, the district court's summary application of W.D. Mich. LCivR 83.1(c)(i) and W.D. Mich. LCrR 57.1(c)(i) to Petitioner's circumstances was unconstitutional. This Court should require the district court to hold an evidentiary hearing and to make findings of fact.

For the reasons set forth above, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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April 30, 2010

APPENDIX A

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

09-1636
IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

In re: FRANK J. LAWRENCE, JR.,
Plaintiff-Appellant,

Filed February 9, 2009
Leonard Green, Clerk

BEFORE: KENNEDY, SUHRHEINRICH, and GILMAN, Circuit Judges.

ORDER

Frank J. Lawrence, Jr., a Michigan resident proceeding pro se, appeals a district court's denial of his petition for admission to practice law in the United States District Court for the Western District of Michigan. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

In 2009, Lawrence, a graduate from an accredited Michigan law school who passed the Michigan Bar Exam, but was denied admission to the State Bar of Michigan, sent a petition for admission to the admissions clerk of the Western District of Michigan, which was forwarded to the

chief judge of the court. The district court judge denied the petition, explaining that, pursuant to the court's local rules, Lawrence was not eligible for admission to practice in the Western District because he had not been first admitted to practice law in any state. Lawrence now appeals, arguing that W.D. Mich. LCivR 83.1(c) is unconstitutional as applied to his case because it requires membership in a state bar as a condition to membership in the federal bar. He claims that he was improperly excluded from the State Bar of Michigan because he exercised his First Amendment rights. For a history of the prior litigation between Lawrence and the State Bar, see Lawrence v. Welch, 531 F.3d 364 (6th Cir. 2008).

A federal district court has the "inherent authority" to deny an attorney's application for admission to practice before that court. Stilley v. Bell, 155 F. App'x 217, 219 (6th Cir. 2005) (citing Application of Mosher, 25 F.3d 397, 399-400 (6th Cir. 1994)); accord In re Desilets, 291 F.3d 925,929 (6th Cir. 2002). Upon review, we find that the district court did not abuse its discretion. See Stilley, 155 F. App'x at 219.

Pursuant to W.D. Mich. LCivR 83.1(c)(i) and W.D. Mich. LCrR 57.1(c)(i), only a person who is "duly admitted to practice in a court of record of a state, and who is in active status and in good standing, may apply for admission to the bar of [the United States District Court for the Western District of Michigan] . . . ." Lawrence did not meet any of the above requirements. Lawrence's constitutionality argument lacks both persuasiveness and merit. See In re Kandekore,140 F. App'x 848, 849-50

(11th Cir. 2005) (holding that the plaintiff's due process rights were not violated by a requirement of admission to the Florida bar before reinstatement to the federal bar).

Accordingly, we affirm the district court's denial of Lawrence's petition for admission. See Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT
Leonard Green, Clerk

APPENDIX B

United States District Court
Western District of Michigan

May 1, 2009

Frank J. Lawrence, Jr.
941 Westview Road
Bloomfield Hills, MI 48304

Re: Your letter of April 24, 2009, w/enclosures seeking admission to the practice of law in the United States District Court for the Western District of Michigan

Dear Mr. Lawrence:

Michelle Benham, Admissions Clerk of our Court, has forwarded your cover letter and Petition for Admission to the undersigned.

The Court's Local Rules clearly require that an applicant for admission be "duly admitted to practice in a court of record of a state". See Local Civil Rule 83.1(c) and Local Criminal Rule 57.1(c). Your letter discloses that you have not been so admitted, as does the Petition itself.

Accordingly, for this reason in the first instance, you are ineligible for admission to practice in the Western District of Michigan Federal Court. The Court has made no further determination of your suitability for admission.

Your Petition for Admission is **DENIED.**

Very truly yours,

Paul L. Maloney
Chief Judge
United States District Court

APPENDIX C

SUPREME COURT OF THE UNITED STATES
Office of the Clerk
Washington, D.C. 20543-0001

March 3, 2010

Mr. Frank J. Lawrence, Jr.
941 Westview Road
Bloomfield Hills, MI 48304

Re: Frank J. Lawrence, Jr. v
United States District Court for the Western District of Michigan
Application No. 09A814

Dear Mr. Lawrence:

The application for extension of time within which to file a petition for writ of certiorari in the above-entitled case has been presented to Justice Stevens, who on March 3, 2010 extended the time to and including May 1, 2010.

This letter has been sent to those designated on the attached notification list.

Sincerely,

William K. Sutter, Clerk
By: Gail Johnson, Case Analyst